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Attorneys for Defendants, Counter Claimants and Third Party Claimants ROBERT E. ESTUPINIAN, GINNY ESTUPINIAN and MUTUAL VISION, LLC, and Defendants and Third Party Claimants MILLENNIUM REALTY GROUP, VESTA REVERSE 100, LLC, VESTA CAPITAL ADVISORS, LLC, EDMUNDO ESTUPINIAN, and HAYDEE ESTUPINIAN

UNITED STATES DISTRICT COURT OF CALIFORNIA

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VESTA STRATEGIES, LLC,

Plaintiff,

vs.

ROBERT E. ESTUPINIAN, GINNY ESTUPINIAN, MUTUAL VISION, LLC, MILLENNIUM REALTY GROUP, VESTA REVERSE 100, LLC, VESTA CAPITAL ADVISORS, LLC, CAROL-ANN TOGNAZZINI, EDMUNDO ESTUPINIAN, and HAYDEE ESTUPINIAN,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No.: C 07-06216 JW RS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF DEFENDANTS, COUNTER CLAIMANTS, AND THIRD PARTY CLAIMANTS ROBERT E. ESTUPINIAN AND GINNY ESTUPINIAN FOR AN ORDER COMPELLING PLAINTIFF/COUNTER DEFENDANT VESTA STRATEGIES, LLC AND COUNTER DEFENDANT/THIRD PARTY DEFENDANT JOHN TERZAKIS TO PRODUCE TAX RECORDS AND DOCUMENTS

I. INTRODUCTION

Plaintiff and counter defendant Vesta Strategies, LLC and its managing member, counter defendant and third party defendant John Terzakis, have refused to provide to moving party defendants, counter claimants and third party claimants Robert E. Estupinian and Ginny

1 Estupinian financial and tax documents to which they have an unfettered right. Because
 2 defendants are presently undergoing an Internal Revenue Service audit which requires
 3 production of the documents in question, it is essential that this court order the immediate
 4 production of such documents.

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 6 **II. THE REQUESTED DOCUMENTS SHOULD BE IMMEDIATELY PRODUCED**
 7 **TO DEFENDANTS**

8 Plaintiff Vesta Strategies, LLC is a California limited liability company. Defendants,
 9 counter claimants and third party claimants Robert E. Estupinian and Ginny Estupinian are the
 10 sole owners of Mutual Vision, LLC, a California limited liability company which owns 49% of
 11 Vesta Strategies (Estupinian Decl. ¶4).

12 California Corporations Code §17106 provides that:

13 Upon the request of a member or a holder of an economic interest,
 14 a manager shall promptly deliver to the member or holder of an
 15 economic interest, at the expense of the limited liability company,
 a copy of the information required to be maintained by paragraph
 . . . (4) of Section 17058.

16 Paragraph 4 of §17058 provides:

17 (4) Copies of the limited liability company's federal, state
 18 and local income tax or information returns and reports, if
 any, for the six most recent taxable years.

19 The moving parties, as owners of 49% of the company clearly have an "economic
 20 interest" as defined by §17001(n) of the California Corporations Code:

21 "economic interest" means a person's right to share in the income,
 22 gains, losses, deductions, credit, or similar terms of, and to receive
 distribution from, the limited liability company . . .

23 The documents which have been requested and refused are included in those defined in
 24 §17508(4) above. They are found in Exhibit A of the Declaration of Brian M. O'Dea, and the
 25 Declaration of David Buchanan, ¶4, and are the following:

- 26 a) 2006 Partnership Returns (form 1065) and all K-1 forms
- 27 or general and limited partners;
- 28 b) Schedule of Partner's bonuses, detailing all contributions,

distributions, partner's share of partnership income and loss, liabilities and any adjustment affecting basis from the inception of the partnership to date;

c) Correspondence or documents referring to any adjustments to basis; and

d) K-1 forms for 2007.

This court has the power to order the immediate production of these documents by virtue of California Corporations Code §17106(f):

In addition to any other remedies, a court of competent jurisdiction may enforce the duty of . . . delivering the information and financial statements required by this section . . .

III. MOVING PARTIES SHOULD BE AWARDED THEIR ATTORNEY FEES

Vesta Strategies, LLC and John Terzakis have blatantly ignored their statutory duty to provide to the moving parties the requested documents. California Corporation Code §17106(g) provides:

. . . If the court finds the failure of the limited liability company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorney fees.

The Declaration of Brian M. O'Dea shows that \$1,462.50 is a reasonable attorney fee for having brought this motion.

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CONCLUSION

For the reasons stated above, this Court should order Vesta Strategies, LLC and its manager John Terazkis to produce tax records and documents to defendants, counter claimants and third party claimants Robert E. Estupinian and Ginny Estupinian, and to pay their reasonable attorney fees in the amount of \$1,462.50.

Respectfully Submitted,

Date: April 30, 2008

RANDICK O'DEA & TOOLIATOS, LLP

By: /s/
Brian M. O'Dea